

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS: 490030512PL048668
COUNTY OF MARION) CAUSE NO. _____

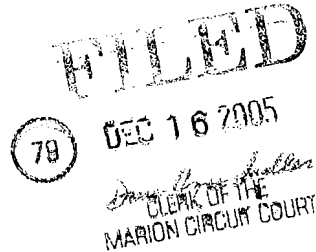
STATE OF INDIANA,)

Plaintiff,)

v.)

ANTHONY J. GREESON,)
Individually and doing business as)
SERVPRO OF INDIANAPOLIS WEST,)

Defendant.)



**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.* for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. The Defendant, Anthony J. Greeson, individually and doing business as Servpro of Indianapolis West, at all times relevant to this complaint was an individual engaged in the home improvement business with a former place of business located in Marion County at 5013 East 13th Street, Indianapolis, Indiana, 46201.

FACTS

3. Since at least March 15, 2005, the Defendant has entered into home improvement contracts with Indiana consumers.

4. On March 15, 2005, the Defendant entered into a contract with Julia West ("West") of Indianapolis, Indiana wherein the Defendant represented he would repair West's home for a price of Eighteen Thousand Seven Hundred Sixty Eight and 63/100 Dollars (\$18,768.63), which West's insurance company paid on her behalf. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contract the Defendant provided to West.

5. Prior to commencing work, the Defendant failed to provide West a contract containing the following requirements:

- a. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. any time limitation on the consumer's acceptance of the home improvement contract;
- c. a reasonably detailed description of the proposed home improvements, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- d. the approximate starting and completion dates of the home improvement;

- e. a statement of any contingencies that would materially change the approximate completion date;
- f. the home improvement contract price; and
- g. signature lines for the home improvement supplier or the supplier's agent, with a legible or typed version of that person's name placed directly after or below the signature.

6. In the course of performing the home improvements, the Defendant, without prior authorization, removed West's air conditioning unit and replaced it with an inferior unit.

7. Prior to engaging in the transaction with West, the Defendant was neither listed as a contractor with the City of Indianapolis' Department of Metropolitan Development Division of Compliance, nor did the Defendant obtain the necessary permit required by law.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would complete the work, or issue a refund, within a reasonable period of time.

9. While the Defendant did begin the work on West's home, the Defendant has yet to either complete the work as represented, or to issue a refund to West.

COUNT I – VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

10. The service described in paragraph 5 above is a "home improvement" as defined by Ind. Code § 24-5-11-3.

11. The transaction referred to in paragraph 5 above is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.

12. By failing to provide West with a home improvement contract, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

13. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 above.

14. The transaction referred to in paragraph 5 above is a “consumer transaction” as defined by Ind. Code § 24-5-0.5-2(a)(1).

15. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

16. The violation of the Home Improvement Contracts Act, referred to in paragraph 5 above, constitutes a deceptive act by the Defendant, in accordance with Ind. Code § 24-5-11-14.

17. The Defendant’s representation to West the consumer transaction had sponsorship, approval, performance, characteristics, accessories, uses, or benefits, when the Defendant knew or reasonably should have known it did not have, as referenced in paragraph 4, is a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

18. The Defendant’s representation he would be able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known he could not, as referenced in paragraph 8, is a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

19. By replacing West's air conditioning unit without West's authorization, when the Defendant knew or reasonably should have known the replacement was unauthorized, as referenced in paragraph 6, is a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(14).

20. By failing to obtain the necessary licenses and permits, as referenced in paragraph 6, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1)(C).

**COUNT III - KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above.

22. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 6, 7, and 8, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter judgment against the Defendant, enjoining the Defendant from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract that contains at a minimum the following:
 - i. The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - ii. The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

- iii. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- iv. A reasonably detailed description of the proposed home improvements;
- v. If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- vi. The approximate starting and completion date of the home improvements;
- vii. A statement of any contingencies that would materially change the approximate completion date;
- viii. The home improvement contract price; and
- ix. Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

- b. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
- c. representing expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot;
- d. engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, when the Defendant knows or reasonably should know the replacement or repair is unauthorized; and
- e. soliciting and/or contracting with consumers without a proper permit or other license.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

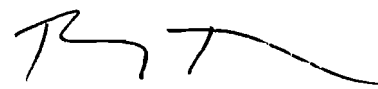
- a. cancellation of the Defendant's unlawful contracts with consumers, including, but not limited to, Julia West, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, including but not limited to Julia West, in an amount to be determined at trial;

- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the maximum statutorily allowed amount per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the maximum statutorily allowed amount per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
302, West Washington St., 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

CUSTOMER INFORMATION FORM – FIRE DAMAGE

☐ 1) **A NATIONWIDE SERVICE COMPANY** SERVPRO is a franchise company with over 1000 locations nationwide. The local owner is provided training and support that allows the SERVPRO Franchise to provide the highest level of service to each customer. Servpro Industries, Inc. can be reached at 1-800-SERVPRO.

☐ 2) **WORK AUTHORIZATION** In order to start our emergency and restoration service, you must sign the Authorization to Perform Services Form. This lets us take action immediately. We do not know your insurance coverage; therefore it is impossible for us to know exactly what your insurance will cover. It is important to understand you are financially responsible for our services. Your deductible is payable to SERVPRO before we start work. If for any reason insurance coverage cannot be verified at the time of our emergency service, an additional deposit may be required.

Date Damage Occurred: 3-15-05

Insurance Carrier: _____

Policy #: _____

Verified: _____

Deductible Amount: \$_____

☐ 3) **OUR INSURANCE** Our SERVPRO Franchise is properly insured with appropriate business insurance.

☐ 4) **REFERENCES** We would be pleased to provide references upon request.

☐ 5) **HOW WE PROCEED**

• **Surveying and Pretesting** – The process of surveying the job environment is an in-depth process. First, we will walk through the job with you to determine the areas that have been affected. Second, we will pretest the cleanability of surfaces as needed. Pretesting is a SERVPRO exclusive process designed to identify those items that will be restorable. Third, we will make a detailed scope and inventory of each affected area in your home. Finally, we will give you a summary of our findings and explain the best steps for restoration.

• **Extent of cleaning** – We will review the full extent of the smoke damage. However, you and your insurance adjuster have the final say as to the extent of cleaning to be performed. Please consult with your adjuster if you have any questions. You will be responsible to pay for anything your insurance company does not pay for.

• **Window cleaning** – For normal smoke damage, windows will be cleaned on the inside only.

• **Metal polishing** – Unless conditions warrant chemical restoration, metal such as silver and brass will be cleaned and buffed only. Polishing will only be done if we are authorized by both you and the adjuster.

• **Floor finishing** – Hard surface floors will be mop cleaned. Stripping, sealing and refinishing will only be done if conditions warrant them and we are authorized by both you and the adjuster.

• **Clean/prepare for paint** – Wall and ceiling surfaces which are heavily smoked and will not clean completely, will be cleaned so that sealer paint will adhere. These surfaces may clean up better with additional work. However, this type of additional work is not authorized by or paid for by insurance companies when painting is still required. If you request any non-covered services, you will be responsible to pay for them.

• **Deodorizing** – We guarantee our deodorizing to be complete provided that all sources of odor have been removed, cleaned or sealed.

• **Clothing** – Your insurance company may encourage you to clean any affected clothing in your home. If the damage is too heavy or if facilities are not available, we will recommend a local professional laundry and dry cleaners we use to do the work. You may use any laundry or dry cleaner that you wish. However, it is important that they be familiar with smoke damage.

• **Ductwork** – If you have forced air heat, we will inspect your system to determine if smoke has entered the ductwork. If so, we will recommend measures to remedy the situation.

☐ 6) **WHAT IS RESTORABLE** We will separate and save any items which do not clean completely. Our crews will never throw anything out unless you request it.

☐ 7) **PRE-EXISTING OR PRE-LOSS CONDITIONS** During the course of cleaning, it is likely we will remove normal soil, which existed prior to your loss. We are happy to do so. If however, the removal of pre-existing soil requires significant extra effort, our crews will be instructed to move on to the next item. Pre-existing damage will also be noted.

☐ 8) **PERSONAL ITEMS** In the course of our survey and cleaning, we will sometimes be required to open doors, cupboards, etc. to qualify and/or restore the damage. If any of these areas contain personal items you would prefer to relocate before we start work, please let us know.

Area: _____

• **GUNS AND AMMUNITION** Our crews are instructed NEVER to touch guns or ammunition. For this reason, we request you remove any such items from the areas we are cleaning.

• **JEWELRY, VALUABLES, HEIRLOOMS** Please remove any valuable items from the areas we are cleaning before the job is started. List any special heirlooms or collectibles that should be given extra special or extra delicate treatment due to their value:

☐ 9) **OVERLOOKED ITEMS** Although our supervisors inspect all work, you certainly understand that no employee is perfect. Please bring any overlooked items to the attention of the supervisor. A final inspection of the job should also be performed with the supervisor.

☐ 10) **INSURANCE ADJUSTERS OR AGENTS** We are neither of the above. We cannot authorize anything to be replaced, repaired or painted. That is entirely between you and your insurance company. Our job is to preserve and protect, stop further damage from occurring, and to restore damaged items to their prior condition when possible.

☐ 11) **IT IS IMPORTANT YOU UNDERSTAND WE WORK FOR YOU, NOT THE INSURANCE COMPANY.**

☐ 12) **HEALTH AND SAFETY** Maintaining your personal health and safety is of great concern to us. All occupants and pets should stay away from the work areas to protect their health and safety during the work process. Material Safety Data Sheets for our products are available upon request. Please indicate if you want copies:

☐ Yes ☐ No

Please note any concerns: _____

☐ 13) **APPROXIMATE COMPLETION** It is difficult to estimate the actual time that will be required to complete the restoration process. We estimate approximately: _____ days. _____ weeks

COMMENTS: _____

I HAVE READ AND UNDERSTAND THE ABOVE STATEMENTS AND INFORMATION CONTAINED HEREIN.

Signed: Julia West

Date: 3-16-05



AUTHORIZATION TO PERFORM SERVICES and DIRECTION OF PAYMENT

Julia West, herein referred to as "Customer", authorizes SERVPRO of
Indianapolis West, herein referred to as "SERVPRO", to perform any and all
necessary cleaning and/or restoration services on Customer's property at: _____

_____ and with respect to items that need to be cleaned at a remote location, to remove and clean such items
as necessary.

Customer authorizes Grange Insurance Company, herein referred to
as "Insurance Company", to pay SERVPRO solely and directly.

If for any reason the check should come to or be made payable to Customer, Customer agrees to pay
SERVPRO immediately upon receipt of the check from the Insurance Company. In order to expedite
payment to SERVPRO, Customer hereby appoints SERVPRO as attorney-in-fact, authorizing SERVPRO
to endorse Customer's name, and to deposit Insurance Company checks or drafts for SERVPRO
services. Customer agrees to pay Customer's deductible in the amount of \$_____ that
applies to this claim, and also if the loss is not covered by insurance, Customer agrees to pay the total
amount to SERVPRO immediately upon receipt of the invoice amount.

It is fully understood that Customer and its agents, successors, assigns and heirs are personally
responsible for any and all deductibles, depreciation, or any costs not covered by insurance. Any and all
charges for services not reimbursed by the Insurance Company are the responsibility of the Customer
and are to be paid upon completion of work.

Interest will be charged at the maximum allowable by law, or at 1.5% per month, whichever is lesser, on
accounts over 30 days past due.

Customer agrees that SERVPRO is working for the Customer and not the Insurance Company or
agent/adjuster.

Remarks: _____

I have read the Terms and Conditions of Service on the reverse side hereof and
agree to same.

Julia West
Signature

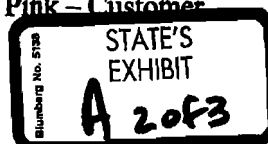
3/16/05
Date

Julia West
Printed Name

Please Review Terms and Conditions On Reverse Side

White - SERVPRO Yellow - Adjuster Pink - Customer

28000 06/01



Terms and Conditions of Service

READ CAREFULLY

Note: This Contract includes a limitation of liability and limitation of remedies.

1. SERVPRO is one of the largest nationwide cleaning and restoration franchise systems in the United States. The SERVPRO franchise owner identified on the front of this Contract (the "Provider") is an independent contractor who agrees to perform the services identified on the front of this Contract (the "Services"). Customer agrees to purchase, receive, and pay for the Services pursuant to the terms and conditions of this Contract. Servpro Industries, Inc., the franchisor, is not a party to any agreement with Customer, is not a guarantor of the Provider's Services, and is not subject to liability arising out of such Services.
2. Provider's performance of the Services is limited by, among other things, the pre-existing conditions and characteristics of the premises, material, fabrics, furniture, and/or other items. **PROVIDER EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY PRE-EXISTING CONDITIONS.** Customer shall retain responsibility and shall be liable for all effects of and costs necessary to correct such conditions, including, by way of example and not limitation, the conditions identified below:
 - (a) Provider may, in its sole discretion, pre-test materials for removability of spots or stains, dye or color (losses), shrinkage, fading, adhesive breakdown, or other problems. It is not always possible to determine these conditions in advance. **PROVIDER DOES NOT GUARANTEE SPOT OR STAIN REMOVAL AND COLOR FASTNESS OR PREVENTION OF SHRINKAGE, FADING, OR ADHESIVE BREAKDOWN.**
 - (b) Provider **DOES NOT GUARANTEE** that wall and ceiling cleaning will restore the original color to painted surfaces.
 - (c) Not all fabrics are conducive to cleaning. Provider shall use reasonable efforts to advise customer of any adverse effects which may be reasonably foreseen due to the nature of the fabric or material involved. **PROVIDER DOES NOT GUARANTEE THAT SUCH MATERIALS CAN BE CLEANED OR THAT THERE WILL BE NO ADVERSE EFFECTS TO ANY ATTEMPT TO CLEAN SUCH FABRICS.**
 - (d) A variety of materials are used in the manufacturing, upholstery and/or installation process. These materials include backing, lining, tacks, or other unknown substances that may cause discoloration or other adverse effects to the face material. Customer acknowledges that it is impossible to determine when such adverse effects may occur and **PROVIDER DOES NOT GUARANTEE AGAINST SUCH ADVERSE EFFECTS.**
 - (e) Customer acknowledges and agrees that mold is commonly found throughout the environment and that it is impossible to eradicate mold. **PROVIDER DOES NOT GUARANTEE THE REMOVAL OR ERADICATION OF MOLD.**
3. **PROVIDER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND ALL IMPLIED WARRANTIES (EITHER IN FACT OR BY OPERATION OF LAW) INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. THIS CONTRACT PROVIDES FOR THE PROVISION OF SERVICES AND DOES NOT PROVIDE FOR A SALE OF GOODS.**
4. **Limitation of Liability:** IN NO EVENT SHALL PROVIDER, ITS OWNERS OR AGENTS, OR ITS FRANCHISOR SERVPRO INDUSTRIES, INC., BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, NOMINAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL, OR FOR ANY PENALTIES, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ASSERTED, INCLUDING CONTRACT, NEGLIGENCE, WARRANTY, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF IT HAD BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE; OR FOR CLAIMS BY A THIRD PARTY. THE MAXIMUM AGGREGATE LIABILITY SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES. IT IS EXPRESSLY AGREED THAT CUSTOMER'S REMEDY EXPRESSED HEREIN IS CUSTOMER'S EXCLUSIVE REMEDY. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Some states/countries do not allow the exclusion or limitation of incidental or consequential damages, so the above may not apply to you.
5. Should legal action be brought under the terms of this Contract or arise out of the performance of the Services, or should the matter be turned over for collection, Provider shall be entitled, to the fullest extent permitted under law, to reasonable legal fees and costs of collection, in addition to any other amounts owed by Customer.
6. Any labor, materials or other work beyond that identified in this Contract shall require a written amendment to this Contract and will result in additional charges.
7. Any claim by customer for nonperformance or breach under this Contract for damages shall be made in writing to Provider within sixty (60) days after the service date. Failure to make such a written claim for any matter which could have been corrected by Provider shall be deemed a waiver by Customer. **NO ACTION, REGARDLESS OF FORM, RELATING TO THE SUBJECT MATTER OF THIS CONTRACT MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE CLAIMING PARTY KNEW OR SHOULD HAVE KNOWN OF THE CAUSE OF ACTION.**
8. A failure of either party to exercise any right provided for herein shall not be deemed to be a waiver of any right hereunder.
9. **CUSTOMER AND PROVIDER EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL CLAIMS OR CAUSES OF ACTION (INCLUDING COUNTERCLAIMS) RELATED TO OR ARISING OUT OF THIS CONTRACT AND AGREE THAT ANY CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY.**
10. If any provision of this Contract is found to be ineffective, unenforceable or illegal for any under present or future laws, such provision shall be fully severable, and this Contract shall be construed and enforced as if such provision never comprised a part of this Contract. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the ineffective, unenforceable or illegal provision or by its severance from this Contract.
11. No modification, termination, or attempted waiver of this Contract shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.

Customer's Initials _____

SERVPRO is always looking for motivated employees. SERVPRO franchisees offer a variety of positions including crew chief, production helper, office and clerical, and many more. Check out the opportunities with your local SERVPRO franchise or on our web site at www.servpro.com.

